

**Matter of People v Lab Worq, LLC**

2022 NY Slip Op 34579(U)

July 7, 2023

Supreme Court, New York County

Docket Number: Index No. 453165/2022

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. JOHN J. KELLEY **PART** **56M**

*Justice*

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In the Matter of

PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of The State of New York

Petitioner,

- v -

LAB WORQ, LLC,

Respondent.

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INDEX NO. 453165/2022

MOTION DATE 02/10/2023

MOTION SEQ. NO. 001

**DECISION, ORDER, +  
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for SUBPOENA DUCES TECUM.

In this proceeding pursuant to CPLR 2308(b), the petitioner, People of The State of New York, by Letitia James, Attorney General of the State of New York (NYAG), seeks to compel the respondent, Lab Worq, LLC (Lab Worq), to comply fully with a subpoena duces tecum issued by the NYAG. Lab Worq opposes the petition and cross-moves pursuant to CPLR 3103(a) for a protective order relieving it from the obligation of providing any additional responses to the subpoena. The petition is granted in part, as set forth herein. The cross motion is granted to the extent of limiting demand 1 of the subpoena, as set forth below, and denying demand 34. The cross motion is otherwise denied.

Lab Worq is a COVID-19 testing site that was formed in August 2021, and began providing testing services to members of the public in September 2021. According to Lab Worq, it collects nasal polymerase chain reaction (PCR) specimens, identifying information, and relevant contact information from customers, and provides the data to one of its partnering laboratories. Lab Worq explained that it does not conduct or perform medical testing itself nor does it bill or charge customers. Instead, Lab Worq is paid by the laboratories to collect the

specimen, and, once received, the laboratories perform the testing and bill the customers or the customers' insurance carriers.

Initially, Lab Worq advertised that it provided test results in 24 hours and "an end-to-end customer experience of less than 48 hours." By December 2021, the NYAG was receiving complaints from consumers stating that they were waiting significantly longer than 24 to 48 hours for their COVID-19 test results. On December 21, 2021, the NYAG sent a letter to Pavel Zaichenko, owner of Lab Worq, requesting that Lab Worq immediately update its website and any test site signage to accurately reflect the expected wait time for test results. The NYAG also requested that Lab Worq email customers who were waiting for test results to inform them of any delays regarding their results, and provide them with a realistic turnaround time. Finally, the NYAG requested that Lab Worq instruct its employees at testing sites to provide accurate information regarding wait times for test results. Lab Worq asserted that it complied with the requests. According to the NYAG, however, it continued to receive numerous complaints concerning Lab Worq's failure to meet its advertised turnaround time, as well other complaints concerning "damaged" tests, inaccurate sample collection dates, inappropriate billing, lack of protection of personal information and, in some cases, not receiving test results altogether.

On February 22, 2022, the NYAG issued a subpoena duces tecum to Lab Worq containing 34 demands relating to the customer complaints and Lab Worq's business practices. On March 11, 2022, Lab Worq served its first response to the subpoena, providing written responses along with some objections, documentation, and a spreadsheet summarizing certain requested data. On March 25, 2022, Lab Worq served its second response to the subpoena, providing essentially the same responses. On April 19, 2022, the NYAG sent Lab Worq a deficiency letter, pointing out the deficiencies with Lab Worq's response,s and requesting corrections no later than May 4, 2022. In particular, the NYAG noted that Lab Worq failed to respond to certain requests based on meritless objections, provided inadequate written responses, provided inaccurate and incomplete responses, and substituted incomprehensible

spreadsheets for subpoenaed documents. On December 9, 2022, the NYAG filed the instant petition.

CPLR 2308(b)(1) provides in pertinent part that,

“[u]nless otherwise provided, if a person fails to comply with a subpoena which is not returnable in a court, the issuer or the person on whose behalf the subpoena was issued may move in the supreme court to compel compliance. If the court finds that the subpoena was authorized, it shall order compliance and may impose costs not exceeding fifty dollars.”

The issuer of a nonjudicial subpoena must show (1) his or her authority to issue the subpoena to investigate, (2) the relevance of the items sought, and (3) some factual basis for the investigation (*see Matter of Libre by Nexus, Inc. v Underwood*, 181 AD3d 488, 488 [1st Dept 2020]; *American Dental Coop., Inc. v Attorney Gen. of N.Y.*, 127 AD2d 274, 280 [1st Dept 1987]). The issuer is not required to demonstrate probable cause or disclose the details of the investigation (*see Pharmaceutical Socy. of N.Y. v Abrams*, 132 AD2d 129, 133 [3d Dept 1987]; *Hirschorn v Attorney Gen. of N.Y.*, 93 Misc 2d 275, 277 [Sup Ct, N.Y. County 1978] *affd* 63 AD2d 865 [1st Dept 1978]). In this case, the NYAG claims that its authority to investigate Lab Worq is provided to it by Executive Law § 63(12) and General Business Law §§ 349 and 350.

In the conduct of any business, trade, or commerce, or in the furnishing of any service within the state of New York, it is unlawful to utilize deceptive acts or practices (*see* General Business Law § 349[a]) or false advertising (*see* General Business Law § 350). Under General Business Law § 349, the NYAG is authorized to take proof, make a determination of the relevant facts, and issue subpoenas in connection with any person or entity engaged in the prohibited acts or practices (*see* General Business Law § 349[f]). Moreover, the NYAG also is authorized to issue subpoenas in connection with investigations of those engaged in “repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business” (Executive Law § 63[12]). The term “fraud” or “fraudulent” refers to “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable

contractual provisions” (*id.*). Finally, the NYAG’s authority under the Executive Law and General Business Law is broad, such that investigations into “possible violations” of the law can be conducted as well (*see La Belle Creole Intl., S. A. v Attorney Genl. of N.Y.*, 10 NY2d 192, 199 [1961]; *American Dental Coop., Inc. v Attorney Genl. of N.Y.*, 127 AD2d at 279).

In this case, the NYAG has shown not only that it has the authority to issue a subpoena to Lab Worq, but it has shown both a factual basis for the investigation and the relevance of the items sought. As explained by the NYAG, Lab Worq advertised that it could provide COVID-19 test results in 24 to 48 hours; numerous consumer complaints, however, established that results were taking longer to obtain than the time it had represented to consumer. Additionally, the NYAG explained that it received complaints of other natures, such as customers’ failure to receive results at all, inaccurate testing data, and improper billing. In opposition, Lab Worq conceded that the NYAG has broad investigatory powers. Nonetheless, Lab Worq argued that the demands of the subpoena have no reasonable relationship to the stated aim of the NYAG’s investigation, which was to pursue several significant public health goals. According to Lab Worq “while the pursuit of these public health goals is laudable, that aim is not sufficient to sustain the petitioner’s motion.” The court disagrees, and finds that aim to be quite sufficient to sustain the NYAG’s petition. The very nature of the NYAG’s office is to serve the public interest the State’s residents, which certainly includes public health matters such as the one at issue. In any event, in evaluating the NYAG’s aim or justification for the issuance of the subpoena, there is a presumption that it is acting in good faith (*see People of State of N.Y. v VDare Found., Inc.*, 2023 NY Slip Op 30217[U], \*5 [Sup Ct, N.Y. County, Jan. 23, 2023]; *see also Matter of Hogan v Cuomo*, 67 AD3d 1144, 1145-1146 [3d Dept 2009]). Thus, there is no merit to Lab Worq’s conclusory assertions that the NYAG’s subpoena is unrelated to any statutory authority or factual basis of its investigation.

Nonetheless, the court may issue a protective order “denying, limiting, conditioning or regulating the use of any disclosure device” to “prevent unreasonable annoyance, expense,

embarrassment, disadvantage, or other prejudice to any person or the courts” (CPLR 3103[a]; see *County of Suffolk v Long Is. Power Auth.*, 100 AD3d 944, 946 [2d Dept 2012]; *Accent Collections, Inc. v Cappelli Enters., Inc.*, 84 AD3d 1283, 1283 [2d Dept 2011]). Here, Lab Worq has requested that the court relieve it of any obligation to provide any additional responses to the subpoena at issue or, in the alternative, relieve it from providing additional responses to demand numbers 1, 15-18, 21-30, and 32-34.

In opposition, the NYAG argued that Lab Worq’s request for a protective order is improper since an investigative subpoena is not a disclosure device within the express terms of CPLR 3103(a). It is true that “a subpoena duces tecum may not be used for the purpose of discovery or to ascertain the existence of evidence” (*Matter of Terry D.*, 81 NY2d 1042, 1044 [1993]; see *Law Firm of Ravi Batra, P.C. v Rabinowich*, 77 AD3d 532, 533 [1st Dept 2010]), and that “its purpose is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding” (*Matter of Terry D.*, 81 NY2d at 1044, quoting *Matter of Constantine v Leto*, 157 AD2d 376, 378 [3d Dept 1990], *affd* 77 NY2d 975 [1991]). While the subpoena may not be subject to a protective order regulating it as a disclosure device, the court must nonetheless limit the scope of certain demands within the subpoena so as to elicit production of documents which are truly relevant and material to the facts at issue (see e.g. *Matter of Evergreen Assn., Inc. v Schneiderman*, 153 AD3d 87, 101 [2d Dept 2017] [limiting scope of attorney general’s subpoena so that only documents directly related to petitioner’s alleged unauthorized practice of medicine were required to be produced]).

Accordingly, demand 1, which seeks documents sufficient to show Lab Worq’s “company structure, including . . . all parent and subsidiary entities, joint ventures in which you have any interest, or any other affiliated entities and the nature of such affiliation,” must be limited by requiring the production of only those documents which pertain to those entities affiliated with and involved in providing COVID-19 testing services in the State of New York. Demand 34, which seeks documents “sufficient to reflect any protocols or procedures with

respect to your communications with New York State or New York City COVID-19 contact tracers,” must be denied altogether, given that the NYAG’s investigation is limited to the COVID-19 testing services that Lab Worq offered to consumers, and does not entail whether Lab Worq followed proper procedures in reporting test results for purposes of contact tracing.

As for Lab Worq’s remaining contentions that certain demands are too onerous, the court notes that the test for the validity of a subpoena is relevancy and not quantity (see *American Dental Coop., Inc. v Attorney Genl. of N.Y.*, 127 AD2d at 282-283). As to the demands for which Lab Worq claimed to have no responsive documents, for one reason or another, it shall, to the extent not already done, properly state so in the Affidavit of Compliance annexed to the subpoena. Finally, while Lab Worq has responded to certain demands with written statements and curated spreadsheets, it shall instead provide the actual documents related to the written statements and spreadsheets, and let the NYAG itself conduct any data analysis and computation it wishes to do so.

Accordingly, it is

ORDERED and ADJUDGED that the petition is granted to the extent that Lab Worq, LLC, shall provide all documents sufficient to comply with the subpoena duces tecum issued by the People of The State of New York, by Letitia James, Attorney General of the State of New York, including a properly executed Affidavit of Compliance regarding the demands that Lab Worq, LLC, claims have no responsive documents, except as otherwise limited by this court in connection with Lab Worq’s cross motion; and it is further,

ORDERED that the cross motion is granted to the extent that demand 1 of the subpoena duces tecum is limited to the production of only those documents that pertain to those entities that were or are affiliated with and involved in providing COVID-19 testing services in the State of New York, demand 34 of the subpoena duces tecum is stricken in its entirety, and the cross motion is otherwise denied; and it is further,

ORDERED that Lab Worq, LLC, shall provide said responses within 30 days of the entry of this order and judgment.

This constitutes the Decision, Order, and Judgment of the court.

07/07/2022  
DATE



JOHN J. KELLEY, J.S.C.

MOTION:	<input checked="" type="checkbox"/>	CASE DISPOSED			<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
CROSS MOTION:	<input checked="" type="checkbox"/>	CASE DISPOSED			<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE